

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of Northern
States Power Company (d/b/a Xcel Energy) for
a Certificate of Need to Establish an
Independent Spent Fuel Storage Installation at
the Monticello Generating Plant

ISSUE DATE: April 7, 2005

DOCKET NO. E-002/CN-05-123

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On January 18, 2005, Xcel Energy (Xcel or the Company) submitted its certificate of need application for a nuclear waste storage facility at the Monticello Nuclear Generating Plant.

On January 20, 2005, the Commission issued a notice requesting comments on the substantial completeness of Xcel's application. The comment and reply periods indicated in that notice ended on February 8, 2004 and February 22, 2005, respectively.

On February 1, 2005, the Commission issued its ORDER EXTENDING COMPLETENESS REVIEW PERIOD. In its Order, the Commission indicated that it would consider the substantial completeness of the application "as soon as practicable."

On February 8, 2005, the Commission received initial comments on completeness from the North American Water Office, the Energy Division of the Department of Commerce, River Communities United for Responsible Energy, and the Institute for Local Self-Reliance.

On February 9, 2005, Carol A. Overland filed initial comments on completeness.

On February 22, 2005, Minnesotans for an Energy-Efficient Economy and Xcel filed reply comments.

The Commission met on March 24, 2005 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission has jurisdiction over applications for certificates of need for large energy facilities, including the nuclear waste storage facility at issue in this matter, under Minn. Stat. §§ 216B.2421 and 216B.243. The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. Minn. Stat. § 216B.243, subd. 4.

II. Referral for Contested Case Proceedings

The Commission finds that it cannot determine, on the basis of the record before it, whether the Company should be granted the certificate of need it seeks. That determination turns on specific facts that are best developed in formal evidentiary proceedings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

III. Issues to be Addressed, Witnesses to be Produced

Minn. Stat. § 216B.243, subd. 3, Minn. Stat. § 116C.83, and Minn. Rules, Chapter 7855 set forth criteria that must be met to establish need for proposed large energy facilities, including the project at issue. The parties to this proceeding should address whether the proposed project meets these criteria. At the end of this process, the Commission is required to make a specific written finding with respect to each of the criteria set forth in Minn. Rules, part 7855.0120.¹ If an application for a certificate of need is denied, the Commission is required to state the reasons for the denial.²

IV. Public Participation

Minn. Stat. § 216B.243, subd. 4 encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated statistical analyst David L. Jacobson to facilitate and coordinate public participation in this proceeding. He may be reached by telephone at (651) 297-4562 and by fax at (651) 297-7073. His address is Suite 350, 121 7th Place East, St. Paul, Minnesota 55101-2147.

¹ Minn. Rules, Part 7855.0100.

² Minn. Rules, Part 7855.0200, subpart 9.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Persons who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public and evidentiary hearings in newspapers throughout the state, to encourage public participation.

V. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5010 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to David L. Jacobson, Public Utilities Statistical Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)297-4562; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with Commission staff and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Company and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Monday, May 9, 2004 at 9:00 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

Minn. Stat. § 216B.243, subd. 5 directs the Commission to act on this application within six months of the date it is substantially complete. The Commission has found that the application is substantially complete as of the Company's supplementary filing, so the six-month period will begin as of that date. The Commission asks the Office of Administrative Hearings to take this statutory provision into consideration when conducting the contested case proceeding. Parties should also note the six-month statutory time frame at the outset and use due diligence to advance the schedule as feasible.

VI. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to certificate of need cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

VII. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this matter to the Office of Administrative Hearings for a contested case proceeding, including the public hearing required as part of the review of the Company's Certificate of Need Application.

2. The contested case proceeding shall begin with a prehearing conference on Monday, May 9, 2005, at 9:00 a.m. in the Small Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.
3. At least one public hearing shall be held in this matter at a time and place determined by the Administrative Law Judge after consultation with Commission staff. Commission staff will also work with the Administrative Law Judge to select a suitable location for the evidentiary hearings on the application.
4. The Commission asks the Department of Commerce to continue its examination of the merits of the application and to provide a recommendation on the reasonableness of granting the requested certificate of need.
5. The Company shall facilitate in every reasonable way the continued examination of the issues by the Department of Commerce and the Environmental Quality Board.
6. The Company shall publish notice of the public and evidentiary hearings at least 10 days in advance in visible display ads in newspapers of general circulation throughout the state. The Company shall work with Commission staff to develop a plan to meet this requirement, including a proposed text, a list of the newspapers it proposes to use, and proposed publication dates prior to publication. The Company shall obtain proofs of publication of the ads required above.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

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MPUC Docket No. E-002/CN-05-123

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Steve M. Mihalchick, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 349-2544

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY:_____

DATE:_____